

Remarks

This Application has been carefully reviewed in light of the Office Action mailed January 11, 2007. Applicant believes all pending claim are allowable over the Examiner's rejections without amendment and respectfully provides the following remarks. Applicant has amended Claims 19-24 to correct a typographical error in each of those claims. These amendments are not considered narrowing and are not made in relation to any of the Examiner's rejections. Applicant respectfully requests reconsideration and allowance of all pending claims.

I. Applicant's Claims are Allowable over *Tsuchiya*

The Examiner rejects Claims 1-4, 13-16, 25, and 34 under 35 U.S.C. § 102(e) as anticipated by U.S. Patent 7,051,173 to Tsuchiya, et al. ("*Tsuchiya*"). Applicant respectfully disagrees and discusses independent Claims 1 and 34 as examples.

"A claim is anticipated only if *each and every element as set forth in the claim* is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987) (emphasis added); M.P.E.P. § 2131. In addition, "[t]he identical invention must be shown in *as complete detail as contained in the . . . claim.*" *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989) (emphasis added); *see also* M.P.E.P. § 2131. Furthermore, "[t]he elements must be arranged *as in the claim* under review." *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990) (emphasis added); M.P.E.P. § 2131. As illustrated below, *Tsuchiya* does not appear to disclose, either expressly or inherently, each and every limitation recited in Applicant's independent claims, as is required under the M.P.E.P. and governing Federal Circuit cases.

A. Independent Claim 1 is Allowable

Independent Claim 1 recites:

A serverless backup system for backing up information on a network including one or more servers, comprising:
a backup storage system for backing up information; and
a storage system for storing information to be backed up and restored, wherein information being backed up is transferred directly from the storage system to the backup storage system without going through a server and information being restored is transferred directly from the backup storage system to the storage system without going through the server.

Applicant respectfully submits that *Tsuchiya* does not appear to disclose, teach, or suggest each and every limitation recited in Claim 1.

As just one example, Applicant maintains that *Tsuchiya* does not appear to disclose, teach, or suggest “a storage system for storing information to be backed up and restored, wherein ***information being backed up is transferred directly from the storage system to the backup storage system without going through a server*** and information being restored is transferred directly from the backup storage system to the storage system without going through the server,” as recited in Claim 1. Instead, *Tsuchiya* discloses the following:

In the copy control management of (a. 12), in the case that a plurality of disks 13 exist in a cluster, the copy management unit 25 ***instructs each computer 11 to copy any disk 13***, thereby ***dispersing copy processes to the computers 11***. Then, ***each computer 11 copies the disk 13*** that is designated by the copy management unit 25. Thus, ***the disk 13 is copied by a plurality of computers 11***, so that the load of a backup process is dispersed, and finally the copy time is shortened.

(*Tsuchiya*, 15:17-24; emphasis added) Thus, it does not appear that *Tsuchiya* discloses a system in which “***information [that is] backed up is transferred directly from the storage system to the backup storage system without going through a server***,” as recited in Claim 1.¹

In response to Applicant’s arguments made in the previous Response, the Examiner references components shown in Figure 32 (computers 11, backup medium 15, tape 16, and tape control unit 27) of *Tsuchiya* and states, “[H]ence information being backed up is transferred directly from the storage system to the backup storage system without going through a server in this system.” (Office Action, Page 11) Applicant respectfully submits that the fact that the referenced components are shown in Figure 32 does not necessarily mean that *Tsuchiya* discloses “information being backed up is transferred directly from the storage system to the backup storage system without going through a server in this system,” as argued by the Examiner. To the contrary, the description of Figure 32 in *Tsuchiya* seems to lead to the opposite conclusion. In particular, *Tsuchiya* states:

FIG. 32 shows a process of using the backup medium 15 as a buffer. ***Here,***

¹ Applicant does not concede that the “computers 11” disclosed in *Tsuchiya* can necessarily be equated with the “one or more servers” recited in Claim 1, but it is unclear to Applicant from the Examiner’s rejection what particular part of the system disclosed in *Tsuchiya* the Examiner is attempting to equate with the one or more servers recited in Claim 1.

since only the computer 12 is connected with the tape 16 according to the configuration of FIG. 2, the tape control unit 27 of this computer 12 reads out the data of a required block from the tape 16 to be installed on the backup medium 15. As the backup medium 15, for example a disk is used. By referring to the data that is loaded into the backup medium 15, even the computer 11 that is not connected with the tape 16 can read the backup data that is stored in the tape 16.

(Col. 17, ll. 3-12) (emphasis added)

First, this portion makes clear that in Figure 2 of *Tsuchiya* (which the Examiner still cites against Claim 1 in the main rejection of Claim 1 on page 3 of the Office Action), any data transferred to or from tape 16 must go through computer 12 (which Applicant assumes the Examiner is equating with the server recited in Claim 1) since only computer 12 is connected with the tape 16. Thus, it appears to Applicant that there can be no direct transfer between backup medium 15 and tape 16 in either Figure 2 or 32 of *Tsuchiya* – any transfer must go through computer 12. Additionally, these statements make clear that the Examiner's citation to Col. 2, ll. 6-14 of *Tsuchiya* as allegedly disclosing “no step of read/write data from/to server memory” (see Office Action, Pages 11-12) does not disclose, teach, or suggest that “information being backed up is transferred directly from the storage system to the backup storage system without going through a server” and that “information being restored is transferred directly from the backup storage system to the storage system without going through the server,” as recited in Claim 1. Second, nowhere does the above-cited description of Figure 32 disclose, teach, or suggest that in Figure 32 data is transferred directly to/from tape 16 from/to backup medium 15. Instead, this portion of *Tsuchiya* merely discloses that computers 11 can access data stored on tape 16 only when that data is loaded into the backup medium 15 (and not directly from tape 16) when computer 12 transfers the data from tape 16 to backup medium 15.

The Examiner also cites Figure 36 of *Tsuchiya* as allegedly disclosing “a local computer including tape control unit 27 and log management unit 26” and concludes that “the local computer could operate independently for read/write data in the backup system without the server operation.” (Office Action, Page 12) The associated description of Figure 36 in *Tsuchiya* states:

FIG. 36 shows a backup process in such a cluster system. In FIG. 36, the copy management unit 25, log management unit 26, and tape control unit 27

are installed in the computers 11 while being dispersed, and the computer 11 having the copy management unit 25 copies the contents of the disk 13 in the backup medium 15.

Each computer 11 transfers the BI log that occurs during the copy operation to the computer 11 having the log management unit 26, and the computer 11 edits the logs to be written in the log medium 14. Then, the backup data and log are written on the tape 16 by the computer 11 having the tape control unit 27.

(Col. 17, ll. 66 through Col. 18, ll. 10)

Even assuming that this portion of *Tsuchiya* discloses transferring data without going through a server (which Applicant does not concede), this portion of *Tsuchiya* would still fail to disclose, teach, or suggest that information being backed up is transferred *directly* from the storage system to the backup storage system and that information being restored is transferred *directly* from the backup storage system to the storage system, as recited in Claim 1. In particular, this portion of *Tsuchiya* implies that the information being backed up to tape 16 is transferred through the local computer 11.

For at least these reasons, Applicant respectfully requests reconsideration and allowance of independent Claim 1 and its dependent claims.

For at least certain analogous reasons, Applicant respectfully requests reconsideration and allowance of independent Claims 13 and 25 and their dependent claims. For example, Applicant respectfully submits that *Tsuchiya* does not appear to disclose, teach, or suggest “backing up information by transferring information directly from the storage system to the backup storage system without going through a server,” as recited in independent Claim 13. As another example, Applicant respectfully submits that *Tsuchiya* does not appear to disclose, teach, or suggest “code for backing up information by transferring information directly from a storage system to a backup storage system without going through a server,” as recited in independent Claim 25.

B. Independent Claim 34 is Allowable

Independent Claim 34 recites:

A serverless backup method comprising:
opening a file system root directory;

parsing the file system root directory for allocation tables of each file and finding attributes of each file;
examining the attributes of each file and determining whether a file is resident or non resident;
backing up entire attributes of a file if it is determined that the file is resident; and
backing up attributes and data blocks belonging to the file if it is determined that the file is non resident.

Applicant respectfully submits that *Tsuchiya* does not appear to disclose, teach, or suggest each and every limitation recited in Claim 34.

For example, the cited portion of *Tsuchiya* does not appear to disclose, teach, or suggest “backing up entire attributes of a file if it is determined that the file is resident” and “backing up attributes and data blocks belonging to the file if it is determined that the file is non resident,” as recited in Claim 34. As allegedly disclosing these limitations, the Examiner cites Column 11, Line 58 through Column 12, Line 46 of *Tsuchiya*. (Office Action, Pages 4-5) Among other disclosures, the cited portion of *Tsuchiya* states, “By performing such a difference backup process instead of performing the backup processes (entire backup processes) of all the blocks of disk 13, the copy time is shortened, and the required medium capacity is decreased.” (Column 12, Lines 43-46) It appears that the cited portion of *Tsuchiya* discloses “performing such a difference backup process instead of performing the backup processes (entire backup processes) of all the blocks of disk 13.” Applicant respectfully submits that this disclosure does not appear to disclose, teach, or suggest “*backing up entire attributes of a file if it is determined that the file is resident*” and “*backing up attributes and data blocks belonging to the file if it is determined that the file is non resident*,” as recited in Claim 34.

In response to this argument from Applicant’s previous Response, the Examiner references a portion of *Tsuchiya* related to logs or log files. The Examiner does not explain how these log files relate to the above-cited portion of *Tsuchiya* (related to the difference backup process), which the Examiner cites against these limitations of Claim 34 in the substantive rejection of Claim 34. (See Office Action, Pages 4-5 vs. Page 12) Moreover, Applicant does not understand the following statement by the Examiner and requests that the Examiner clarify this statement: It is suggested that the limitation ‘a file is resident or non resident’ should be further clarified *as it is too broad to read on a log file of Tsuchiya, and a*

log file of Tsuchiya is not stored could be equivalent with ‘non resident’ of claim 34.
(Office Action, Page 12) (emphasis added)

Applicant again notes that as allegedly disclosing “examining the attributes of each file and determining whether a file is resident or nonresident,” as recited in Claim 34, the Examiner cites a disclosure in *Tsuchiya* appearing at Column 8, Line 63 through Column 9, Line 11. (Office Action, Page 4) If the Examiner maintains the rejection on these grounds, Applicant respectfully requests that the Examiner explain how the decision purportedly disclosed at Column 8, Line 63 through Column 9, Line 11 relates to the actions purportedly taken at Column 11, Line 58 through Column 12, Line 46 of *Tsuchiya*. This would be particularly helpful given that Claim 34 recites “examining the attributes of each file and *determining whether a file is resident or nonresident*,” “backing up entire attributes of a file *if it is determined that the file is resident*” and “backing up attributes and data blocks belonging to the file *if it is determined that the file is non resident*.”

For at least these reasons, Applicant respectfully requests reconsideration and allowance of independent Claim 34.

II. The Separately Rejected Dependent Claims are Allowable over the Proposed Combinations

The Examiner rejects Claims 5, 17, and 26 under 35 U.S.C. § 103(a) as being unpatentable over *Tsuchiya* in view of U.S. Patent 6,728,848 to Tamura, et al. (“*Tamura*”). The Examiner rejects Claims 6-7, 18-19, and 27-28 under 35 U.S.C. § 103(a) as being unpatentable over *Tsuchiya* in view of U.S. Patent 6,081,875 to Clifton, et al. (“*Clifton*”). The Examiner rejects Claims 8-9, 20-21, and 29-30 under 35 U.S.C. § 103(a) as being unpatentable over *Tsuchiya* in view of *Clifton* and U.S. Patent 6,785,786 to Gold, et al. (“*Gold*”). The Examiner rejects Claims 10-12, 22-24, and 31-33 under 35 U.S.C. § 103(a) as being unpatentable over *Tsuchiya* in view of *Clifton* and U.S. Patent 6,738,923 to Blam, et al. (“*Blam*”).

Dependent Claims 5-12, 17-24, and 26-33 depend from independent Claims 1, 13, and 25, respectively, which Applicant has shown above to be allowable over *Tsuchiya*. It does not appear that the references cited by the Examiner to reject dependent Claims 5-12, 17-24,

and 26-33 make up for the above-discussed deficiencies of *Tsuchiya*. Thus, dependent Claims 5-12, 17-24, and 26-33 are allowable at least because they depend from allowable independent claims. Additionally, depend Claims 5-12, 17-24, and 26-33 recite further patentable distinctions over the various references cited by the Examiner. To avoid burdening the record and in view of the clear allowability of independent Claims 1, 13, and 25, Applicant does not specifically discuss these distinctions in this Response. However, Applicant reserves the right to discuss these distinctions in a future Response or on Appeal, if appropriate. Moreover, Applicant does not admit that the proposed combinations of references are possible or that the Examiner has demonstrated the required teaching, suggestion, or motivation to combine these references.

For at least these reasons, Applicants respectfully request reconsideration and allowance of dependent Claims 5-12, 17-24, and 26-33.

III. No Waiver

All of Applicant's arguments and amendments are without prejudice or disclaimer. Additionally, Applicant has merely discussed example distinctions from the references cited by the Examiner. Other distinctions may exist, and Applicant reserves the right to discuss these additional distinctions in a later Response or on Appeal, if appropriate. By not responding to additional statements made by the Examiner, Applicant does not acquiesce to the Examiner's additional statements. The example distinctions discussed by Applicant are sufficient to overcome the Examiner's rejections.

Conclusion

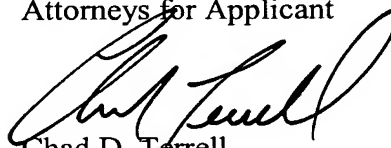
Applicant has made an earnest attempt to place this case in condition for allowance. For at least the foregoing reasons, Applicant respectfully requests full allowance of all pending claims.

If the Examiner feels that a telephone conference would advance prosecution of this Application in any manner, the Examiner is invited to contact Chad D. Terrell, Attorney for Applicant, at the Examiner's convenience at (214) 953-6813.

Although no fees are believed due at this time, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.
Attorneys for Applicant



Chad D. Terrell
Reg. No. 52,279

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CORRESPONDENCE ADDRESS:

Customer No. **05073**

ATTORNEY DOCKET
063170.6722



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Examiner: Miranda Le
Title: *Systems and Methods for Information Backup*

Mail Stop Amendment AF
Commissioner of Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

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